MICHIGAN SUPREME COURT

Office of Public Information

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"EMERGENCY AID" EXCEPTION TO SEARCH WARRANT REQUIREMENT AT ISSUE IN CASE MICHIGAN SUPREME COURT WILL HEAR APRIL 7
Also before the Court: Should trial court have considered criminal defendant's ability to pay when ordering reimbursement of court-appointed attorney's fees?

LANSING, MI, April 6, 2009 – The "emergency aid" exception to the search warrant requirement, and whether it applied in a case where police attempted to enter the defendant's home after finding traces of blood and signs of damage outside, will come before the Michigan Supreme Court tomorrow for oral argument.

In People v Fisher, police officers went to the defendant's house after receiving a complaint about a man "going crazy." After observing the defendant through a window, and finding small amounts of blood and some damage outside the house, the officers tried to communicate with the defendant, who told them to get a search warrant. The officers decided to enter the house to see if anyone else was injured; an officer who tried to come in through the front door was met by the defendant pointing a gun at him. After obtaining a search warrant, the officers arrested the defendant, who was charged with felonious assault and felony-firearm. But the trial court, upheld by the Michigan Court of Appeals, found that the police officers' initial contact amounted to a warrantless search in violation of the Fourth Amendment, and that evidence resulting from that contact, including testimony about the defendant pointing a gun at a police officer, must be suppressed. The "emergency aid" exception did not apply because the evidence did not indicate that anyone had suffered a serious injury to justify a warrantless entry, the trial and appellate courts concluded. The prosecutor appeals, arguing that the emergency aid exception does apply in this case. Moreover, the exclusionary rule – which bars evidence obtained through an unconstitutional search – does not apply to independent crimes directed at police as a reaction to the illegal search, the prosecutor argues.

The Court will also hear People v Jackson, in which the defendant challenges a trial court's order for him to repay fees for a court-appointed attorney. The defendant argues that, under the Michigan Court of Appeals' 2004 decision in *People v Dunbar*, the trial court should have inquired about the defendant's other financial obligations, and his incarceration, into consideration before imposing the order. The Court may consider whether *Dunbar* was correctly decided, and also whether it is premature to challenge a reimbursement order before attempts are made to collect from the defendant.

The other cases the Supreme Court will hear involve real property, medical malpractice, and criminal matters.

Court will be held on **April 7 and 8** in the Supreme Court's courtroom on the sixth floor of the Michigan Hall of Justice in Lansing. Oral arguments will begin each day at **9:30 a.m.** The Court's oral arguments are open to the public.

Please note: the summaries that follow are brief accounts of complicated cases and may not reflect the way that some or all of the Court's seven justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. Briefs in the cases are available online at http://www.courts.michigan.gov/supremecourt/Clerk/MSC_orals.htm. For further details about the cases, please contact the attorneys.

Tuesday, April 7
Morning Session

PEOPLE v FISHER (case no. 136591)
Prosecuting attorney: David A. McCreedy/(313) 224-3836
Attorney for defendant Jeremy Fisher: Allen J. Counard/(734) 692-0033
Trial Court: Wayne County Circuit Court
At issue: The police, acting on a complaint about a man acting "crazy," went to defendant's home, where they observed damage and small amounts of blood outside the house. They tried to communicate with the defendant, but he rebuffed them and told them to get a search warrant. The officers attempted to enter the house to see if anyone else was injured, but retreated after the defendant pointed a gun at one officer who opened the front door. After obtaining a search warrant, the officers arrested the defendant for felonious assault and felony-firearm. The trial court granted the defendant's motion to suppress evidence of the gun, concluding that the warrantless entry was unjustified by the emergency aid exception to the search warrant requirement. The Court of Appeals affirmed. Does the emergency aid exception apply? May evidence of an assault against the police be suppressed? What is the proper standard of appellate review for a trial court's decisions concerning an alleged Fourth Amendment violation for warrantless entry of a house?
Background: Acting on a complaint about a man "going crazy," police officers went to Jeremy Fisher's home, where they observed Fisher through the front window of the house; he was walking back and forth, screaming and throwing things. Nearby fence posts were knocked down, and a truck parked in front of the house was damaged. The officers went to a side door and attempted to contact Fisher, but he would not answer the door. The officers spotted small amounts of fresh blood both inside and outside the truck and on the back door of Fisher's home. They also observed three broken windows that appeared to have been broken from the inside of the house. The officers asked Fisher to come to the door, to identify himself, tell them what his problem was and whether he needed medical attention, but Fisher responded with profanities and told the officers to get a search warrant. After consulting with their supervisor, the officers decided to enter the house to see if anyone else was injured. The back door was locked, but the front door, while blocked with a couch, was not locked. An officer pushed the front door open a few inches, but there was not enough room to enter, and he backed away after Fisher pointed a gun at him. The police obtained a search warrant; Fisher was arrested and charged with felonious assault and felony-firearm. Before trial, Fisher's counsel moved to suppress evidence and quash

the information under the exclusionary rule, which bars the use of evidence seized as a result of an unconstitutional search. Fisher's attorney argued that the police officers' initial contact amounted to a warrantless search in violation of the Fourth Amendment, and that evidence resulting from that contact, including testimony about Fisher pointing a gun at a police officer, must be suppressed. The trial court ruled in Fisher's favor and the prosecutor appealed; the Court of Appeals remanded the case to the trial court with instructions to hold an evidentiary hearing. The trial court again ruled in Fisher's favor, finding that the police's initial entry was unconstitutional and that the evidence obtained as a result must be suppressed. The court rejected the prosecutor's argument that the warrantless entry was reasonable under the "emergency aid" exception to the search warrant requirement; there was no reason to believe that there was another person in the house who needed medical attention, the court concluded. The prosecutor appealed. The trial court erred in finding that the "emergency aid" exception did not apply, the prosecutor contended; moreover, the exclusionary rule did not apply to independent crimes directed at police as a reaction to an illegal search, the prosecutor maintained. In an unpublished 2-1 per curiam opinion, the Court of Appeals affirmed the trial court decision. The majority concluded that the evidence did not indicate that anyone had suffered a serious injury such that a warrantless entry into the residence was justified. The dissenting judge found the entry justified under the emergency aid exception. The prosecutor appeals.

PEOPLE v JACKSON (case no. 135888)
Prosecuting attorney: Mary Jo Diegel/(586) 469-5350
Attorney for defendant Harvey Eugene Jackson: Valerie R. Newman/(313) 256-9833
Attorney for amicus curiae Prosecuting Attorneys Association of Michigan: Marilyn A. Eisenbraun/(313) 224-5794
Trial Court: Macomb County Circuit Court
At issue: The trial court ordered the defendant in this criminal case to repay fees for his court-appointed attorney. The defendant asked the court to consider his financial circumstances under *People v Dunbar*, 264 Mich App 240 (2004). In *Dunbar*, the Michigan Court of Appeals held that, pursuant to MCL 769.1k, a trial court must consider a defendant's ability to repay attorney fees before ordering the defendant to do so. Was *Dunbar* correctly decided? Did *Dunbar* correctly hold that a challenge to an order for repayment of attorney fees may be premature until collection efforts have begun? Should the trial court consider the defendant's other financial obligations, and whether the defendant will be incarcerated? Does imposing a 20 percent late fee pursuant to MCL 600.4803(1) constitute an impermissible collection effort or sanction? Does such a late fee violate *Dunbar* by providing a means of enforcement that is not available to other civil debtors?
Background: Harvey Eugene Jackson pled no contest to first-degree home invasion, assault with intent to rob while unarmed, and malicious tampering with phone lines. Jackson was sentenced to eight to 20 years in prison for the home-invasion conviction, eight to 15 years in prison for the assault conviction, and one to two years in prison for the malicious tampering conviction. He was also ordered to pay restitution of $1,357.50 and other costs, including a $725.00 reimbursement for his court-appointed attorney. The judge then signed an order to remit prisoner funds for fines, costs, and assessments in the total amount of $2,322.50. Jackson filed a motion asking, among other things, that the court consider his financial ability to repay his attorney fees, citing *People v Dunbar*, 264 Mich App 240 (2004). In *Dunbar*, the Michigan Court of Appeals held that trial courts are required to consider a defendant's ability to pay before ordering the

defendant to reimburse the court for his or her attorney fees. The trial court denied Jackson's motion; Jackson filed an application for leave to appeal to the Court of Appeals, but it was denied on the basis of lack of merit in the grounds presented. Jackson appeals.

JACKSON v ESTATE OF GREEN (case no. 136423)
Attorney for plaintiff Joan B. Jackson: Laurie S. Longo/(734) 730-3936
Attorney for defendant Estate of Ronald B. Green: Bridget Brown Powers/(231) 347-8200
Trial Court: Charlevoix County Circuit Court
At issue: The plaintiff had both her name and the defendant's placed on real estate deeds, but later sued the defendant when he refused to take his name off the deeds, asking the court to grant her partition action and remove the defendant's name from the deeds. She also sued him for money she claimed she had loaned him over the years. While the case was pending in the Court of Appeals, the defendant died. Does a partition action involving individuals who jointly own real estate survive the death of one of the parties, if the form of joint ownership is an ordinary joint tenancy that does not expressly grant rights of survivorship? If so, does title to the property nevertheless automatically transfer to the surviving owner upon the deceased owner's death if a partition order was not entered before the death? When does a cause of action accrue, and the statute of limitations begin to run, on a claim of breach of a verbal loan that did not include explicit terms for repayment? Must the lender must demand payment on such a loan within a specified period after the loan is made?
Background: Ronald Green did construction work, farm chores and odd jobs for Joan Jackson over a period of several years. During that time, Jackson gave Green checks totaling more than $50,000. She also caused his name to be placed with hers on deeds for two parcels of real estate, making them joint tenants. (Joint tenancy is established when each property owner receives title at the same time, on the same deed or other title document, and has an equal share of the property and an identical right of possession. If one joint tenant dies, the other tenant has the right of survivorship and succeeds to the dead tenant's interest in the property.) Jackson said that she put Green's name on the deeds under the mistaken impression that she needed two signatures on the deeds to avoid legal difficulties, and that she believed that Green would take his name off the deeds any time that she asked him to do so. She also claimed that she wrote the checks to Green because Green had asked to borrow money from her, and that although Green never said he would pay the money back, she believed that he would repay her when he could. When Jackson asked Green to remove his name from the deeds and he refused, Jackson sued Green. Her complaint included a partition action, in which she asked the court to remove Green's name from the deeds. She also asked the court to enforce her loan claim against Green. The trial court dismissed Jackson's claims regarding the real estate, finding that neither Jackson's belief that she needed two signatures on the deeds, nor her belief that Green would remove his name when she asked him to, had any legal significance. As for the checks Jackson wrote to Green, the trial court ruled that whether the checks were loans, gifts, or payment for Green's work for Jackson was a factual issue for the jury. In so ruling, the trial judge noted that if Jackson's checks were loans to Green that were payable on demand, the statute of limitations would not begin to run on Jackson's claim until she demanded payment. A jury found that the checks had been loans and that Green was liable to Jackson for $51,383. Jackson appealed the judgment regarding her real estate claims; Green appealed the judgment regarding the purported loans. While the appeal was pending in the Court of Appeals, Green died, and his estate was substituted as party-plaintiff in the partition action. The Court of Appeals ruled, in an unpublished per curiam opinion, that any

rights to the real estate at issue held by Green had reverted to Jackson when Green died. The Court of Appeals affirmed regarding the purported loans. It rejected the Green estate's argument that the statute of limitations barred Jackson's claims, reasoning that (assuming that the checks were loans) Jackson's cause of action did not accrue until she demanded payment. Green's estate appeals.

Afternoon Session

PEOPLE v IDZIAK (case no. 137301)
Prosecuting attorney: T. Lynn Hopkins/(616) 632-6710
Attorney for defendant Patrick Lawrence Idziak: Jeanice Dagher-Margosian/(517) 334-6069
Attorney amicus curiae Michigan Department of Corrections: B. Eric Restuccia/(517) 373-1124
Trial Court: Kent County Circuit Court
At issue: The defendant, a parolee, was arrested in connection with a bar robbery, and ultimately pled guilty to armed robbery and felony-firearm. He seeks credit for time served while he awaited trial and sentencing. Is the Parole Board required to compute a new parole eligibility date for inmates who commit new criminal offenses while on parole, by exercising its discretion to determine what is the "remaining portion" of the sentence for the previous offense? If so, is this requirement satisfied by a Michigan Department of Corrections policy to automatically begin the new sentence as of the date of the most recent sentencing, minus any days of jail credit awarded by the trial court? Is the judiciary precluded from reviewing such a decision by the MDOC under *Warda v City Council*, 472 Mich 326 (2005)? Can the decision constitute a violation of a defendant's right to due process or equal protection under the law? Is a trial court authorized, required, or not authorized to award jail credit under MCL 769.11b?
Background: Patrick Lawrence Idziak was arrested in connection with a bar robbery; he eventually pled guilty to armed robbery and felony-firearm in exchange for the prosecutor's agreement to dismiss other charges. He was sentenced to 12 to 50 years in prison for the robbery, consecutive to the mandatory two-year term for felony firearm. Idziak had been on parole at the time of his robbery, and the sentences imposed were consecutive to the sentences for which he was on parole. Idziak was incarcerated from the time of his arrest until sentencing. There was no mention of jail credit at sentencing, and the judgment of sentence does not show any jail credit for either offense. Idziak filed a timely post-judgment motion for resentencing, alleging that jail credit was mandatory under MCL 769.11b and, in the alternative, that the judge had discretion to award such credit. The trial judge denied that motion, concluding that he did not have discretion to award jail credit. The Court of Appeals denied Idziak's subsequent application for leave to appeal for lack of merit. Idziak appeals.

Wednesday, April 8
Morning Session Only

BUSH v SHABAHANG, et al. (case nos. 136617, 136653, 136983)
Attorney for plaintiff Gary L. Bush, Guardian of Gary E. Bush, a Protected Person: Sandra L. Ganos/(248) 548-8540
Attorneys for defendant Behrooz-Bruce Shabahang, M.D.: Richard K. Grover, Jr., Jeffrey K. Wesorick/(616) 257-3900

Attorney for defendants John Charles Heiser, M.D., and West Michigan Cardiovascular Surgeons: Timothy P. Buchalski/(616) 575-2060
Attorney for defendant Spectrum Health Butterworth Campus: Douglas P. Vanden Berge/(616) 235-3500
Attorney for amicus curiae Michigan Association for Justice: Mark R. Granzotto/(248) 546-4649
Attorney for amicus curiae University of Michigan: Richard C. Kraus/(517) 371-8100
Trial Court: Kent County Circuit Court
At issue: In this medical malpractice case, the plaintiff filed suit less than 182 days after serving the defendants with a notice of intent to sue, but argued that the suit was not premature under MCL 600.2912b(8); he contended that the defendants' responses to the notice of intent were insufficient, allowing him to file the complaint after 154 days. The Court of Appeals majority held that the plaintiff could file suit earlier based on his belief that the responses were inadequate, and could do so without first challenging the responses in court; the plaintiff would have to bear the risk of dismissal if a court later concluded that the responses were adequate, the majority said. Was the plaintiff's suit filed prematurely? The Court of Appeals also dismissed without prejudice direct liability claims against two of the defendants, finding that the plaintiff's notice of intent was inadequate to put those defendants on notice that they could be held directly liable for the actions of staff other than two of the doctors who performed the surgery. Did the plaintiff's defective notice of intent as to these defendants toll the period of limitations pursuant to MCL 600.5856(c), as amended by 2004 PA 87, effective April 22, 2004?
Background: On August 7, 2003, 33-year-old Gary E. Bush underwent surgery to repair an aortic aneurysm at Spectrum Health's Butterworth Campus. Drs. Behrooz-Bruce Shabahang and John Charles Heiser, surgeons employed by West Michigan Cardiovascular Surgeons, performed the operation. According to the medical malpractice claim later brought on Bush's behalf, Shabahang allegedly lacerated the aneurysm, which made it necessary for Heiser to cannulate Bush's femoral artery and femoral vein so that Bush could be placed on a heart-bypass machine before the surgery could proceed. Drs. George T. Sugiyama, M.D., and M. Ashraf Mansour, vascular surgeons with Vascular Associates, P.C., repaired Bush's femoral artery and femoral vein. The medical malpractice complaint alleges that the injuries Bush suffered during the surgery and his recovery rendered him unable to lead an independent life.

On August 5, 2005, the plaintiff served a notice of intent (NOI) to file a medical malpractice complaint against Shabahang, Heiser, Sugiyama, Mansour, West Michigan Cardiovascular, Vascular Associates, and Spectrum Health. The NOI is required by MCL 600.2912b, which provides that a person may not sue for medical malpractice without first giving the defendant health professional or health facility written notice "not less than 182 days before the action is commenced." The statute requires a defendant to respond to the NOI in writing within 154 days of receiving the NOI. Sugiyama, Mansour, Vascular Associates, and Shabahang responded to the NOI.

On January 27, 2006, 175 days after serving the NOI, the plaintiff filed his complaint against all defendants. Shortly thereafter, Sugiyama, Mansour, and Vascular Associates moved to dismiss, arguing that the plaintiff 1) failed to file an NOI that complied with the requirements of MCL 600.2912b, and (2) did not wait the required 182 days before filing his complaint. Shabahang, Heiser, and West Michigan Cardiovascular joined the motion. Spectrum Health later filed its own motion for summary disposition based solely on the NOI's alleged deficiency. In response, the plaintiff argued that the NOI met the minimum statutory requirements. He also

contended that the complaint was not filed prematurely because the defendants' responses to the NOI were deficient, allowing him to file suit earlier under MCL 600.2912b(8). That provision states that, if a plaintiff does not receive the written response required under the statute, the plaintiff may bring suit "upon the expiration of the 154-day period."

At issue in this appeal is whether the Court of Appeals correctly held that the plaintiff's direct liability claims against West Michigan Cardiovascular and Spectrum Health should be dismissed without prejudice, rather than with prejudice, and whether the plaintiff's complaint was filed prematurely as to Shabahang. In its published decision, the Court of Appeals held that the plaintiff's NOI did not adequately address the standard of care applicable to Western Michigan Cardiovascular under a direct theory of liability for failure to properly train or hire staff, because the NOI "merely provides that WM Cardiovascular should have hired competent staff members and properly trained them." Similarly, as to Spectrum Health's direct liability, the NOI was inadequate because "it does not adequately address the standard of care applicable to Spectrum Health's staff other than Heiser and Shabahang," the appellate panel said. However, when read as a whole, the NOI did provide both defendants with adequate notice that they could be held vicariously liable for Heiser or Shabahang's acts, the panel found.

The Court of Appeals panel split on the issue of whether the complaint was filed prematurely as to Shabahang. The majority ruled that the plaintiff could file suit after 154 days on the basis of his belief that Shabahang's response to the NOI was deficient; the plaintiff did not need to first challenge the response's validity by bringing a motion in court, the judges said. The majority observed that "Indeed, a plaintiff who files before the expiration of the 182-day waiting period in reliance on MCL 600.2912b(8) assumes the risk that the trial court will conclude that the defendant's response was adequate and, therefore, dismiss the plaintiff's case." The dissenting judge disagreed, reasoning that MCL 600.2912b(8) does not permit a plaintiff to unilaterally determine whether a defendant's response satisfies the statute's detailed requirements. In addition, even if the defendant's response does not comply with the statute, MCL 600.2912b does not authorize a plaintiff to ignore the 182-day notice requirement, the dissent said.

The defendants now seek the Supreme Court's review in three separate applications. West Michigan Cardiovascular and Spectrum Health contend that the Court of Appeals should have dismissed the direct liability claims against them with prejudice, rather than without prejudice, under *Boodt v Borgess Medical Center*, 481 Mich 558 (2008). In *Boodt*, the Michigan Supreme Court held that a defective NOI did not toll the statute of limitations; a complaint and affidavit of merit filed after the defective NOI also did not toll the statute of limitations, since the plaintiff could not properly sue after filing the deficient NOI, the Court said. Therefore, West Michigan Cardiovascular and Spectrum Health argue, once the Court of Appeals determined that the NOI was defective on the direct liability claims, the appeals court should have dismissed those claims with prejudice on the basis that the statute of limitations had run out on those claims.

PEOPLE v LOWE (case no. 137284)
Prosecuting attorney: B. Eric Restuccia/(517) 373-1124
Attorney for defendant Jamie Lynn Lowe: Brandy Y. Robinson/(313) 256-9833
Trial Court: Hillsdale County Circuit Court
At issue: The defendant pleaded guilty to possession of methamphetamine with sentence enhancement as a second drug offender. The minimum sentence guidelines range was calculated

to be 10 to 23 months. The trial court imposed a sentence of 46 months to 20 years, doubling the minimum sentence under *People v Williams*, 268 Mich App 416 (2005), and did not state any reason for an upward departure from the guidelines. If a defendant is subject to sentence enhancement of "twice the term otherwise authorized" under MCL 333.7413(2), may the minimum sentence range recommended by the sentencing guidelines be doubled? Was this question was correctly decided in *People v Williams*, 268 Mich App 416 (2005)? What, if any, impact does MCL 777.21(4) have on this question?

Background: Jamie Lynn Lowe was part of a group that rented a Hillsdale Motel room, which they began converting into a methamphetamine lab. A motel employee called police because of the smell of chemicals coming from the room. When a Hillsdale County Sheriff's deputy knocked on the motel room door, Johnny Dewayne Thomas answered; Lowe was in the room. The deputy observed materials used in methamphetamine production. Thomas consented to a search of the room, which revealed suspected marijuana and methamphetamine as well as meth manufacturing materials, including propane cylinders. Thomas also consented to a search of his vehicle, which turned up a handgun. Police found no evidence of actual manufacturing, but surmised that the chemical smell came from the attempt to wash out the propane cylinders in the bathtub. Lowe was charged with operating/maintaining a methamphetamine laboratory, delivery/manufacture of methamphetamine, possession of methamphetamine and carrying a concealed weapon. The prosecutor notified Lowe that he would be charged as a second or subsequent controlled substance offender pursuant to MCL 333.7413(2)(a). That statute states in part that "an individual convicted of a second or subsequent offense under this article may be imprisoned for a term not more than twice the term otherwise authorized or fined an amount not more than twice that otherwise authorized, or both." Lowe pled guilty to possession of methamphetamine with sentence enhancement as a second drug offender; the other charges against him were dismissed as part of the plea bargain. The minimum sentence guidelines range was calculated to be 10 to 23 months. The Department of Corrections recommended a sentence of one year of jail time, and Lowe asked to be sentenced in accord with the Department's recommendation. But the trial court imposed a sentence of 46 months to 20 years. The trial court did not state any reason for its upward departure from the sentencing guidelines on the authority of *People v Williams*, which held that the doubling provision of MCL 333.7413(2) applies to both maximum and minimum sentences. Lowe appealed to the Court of Appeals, claiming that *Williams* is wrongly decided, but the appellate court denied leave to appeal. Lowe appeals.

PEOPLE v HOLDER (case no. 137486)
Prosecuting attorney: Dale A. DeGarmo/(810) 257-3248
Attorney for defendant Gregory Lewis Holder: Jacqueline J. McCann/(313) 256-9833
Attorney for Michigan Department of Corrections: B. Eric Restuccia/(517) 373-1124
Trial Court: Genesee County Circuit Court

At issue: The defendant had been on parole, but was discharged before the charges in this case arose. The defendant was convicted of the charges in this case, and a judgment of sentence was entered. After the Court of Appeals denied leave to appeal, the Michigan Department of Corrections informed that trial court that MDOC had "cancelled" the defendant's discharge of parole. MDOC asked the court to amend the defendant's judgment of sentence to show that the sentences in this case were to run consecutive to the sentences for which the defendant had been on parole. The court did so, without notifying the defendant. Was the first judgment of sentence

valid when imposed because the defendant was not on parole at the time he committed the offenses in this case? Did the trial court lack the authority to modify the judgment of sentence?
Background: Gregory Lewis Holder had been on parole, but was discharged before the charges in this case were brought against him. Under a plea agreement involving other cases, Holder pleaded guilty to possession with intent to deliver over 1,000 grams of cocaine, felon in possession of a firearm, and felony-firearm. Holder was sentenced to concurrent terms of 225 to 475 months for the cocaine charge, and 12 to 60 months for being a felon in possession of a firearm; both sentences were consecutive to a term of 24 months for felony-firearm. Holder filed an application for leave to appeal in the Court of Appeals, which denied leave to appeal. Later, the Michigan Department of Corrections wrote a letter to the trial court, informing the court that, because Holder had committed an offense in another case while still on parole, the MDOC reinstated Holder's on-parole status. The trial court should consider Holder to have been "on parole" when the offenses in this case were committed, MDOC stated. Holder's being on parole would justify the imposition of consecutive sentences, rather than concurrent sentences, MDOC's letter stated. The trial court accordingly amended the judgments of sentence to make Holder's sentences in this case consecutive to the sentences for which Holder had been on parole. The trial court did not notify Holder of its actions or hold a hearing. When Holder learned that the trial court had modified the judgments of sentence and that MDOC had recalculated his release dates, he filed an application for leave to appeal, asking the Court of Appeals to review the trial court's actions. The Court of Appeals denied leave to appeal. Holder appeals.

PEOPLE v KIRCHER (case no. 137652)
Prosecuting attorney: Heather S. Meingast/(517) 373-1124
Attorney for defendant David Kircher: George E. Ward/(734) 812-4173
Trial Court: Washtenaw County Circuit Court
At issue: The defendant was convicted of pollution charges for pumping raw sewage into a catch basin that led to a river. One conviction was for "substantial endangerment to the public health, safety or welfare," pursuant to MCL 324.3115(4). That statute states that the trial court "shall impose . . . a sentence of 5 years' imprisonment." But MCL 324.3115(4) is included in a list of crimes to which the guidelines for minimum sentences apply, see MCL 777.13c. Does the plain language of MCL 324.3115(4) require a determinate sentence of five years, or does the inclusion of that statute in MCL 777.13c require imposition of an indeterminate sentence, with a minimum and maximum term?
Background: The Michigan Attorney General charged David Kircher with violating the Natural Resources and Environmental Protection Act after Kircher pumped an estimated 100,000 gallons of raw sewage containing everything from dishwater to fecal material into a catch basin and drainage ditch that led to the Huron River. The Attorney General alleged that Kircher discharged a polluting substance directly or indirectly into the Huron River (Count I), and that the discharge posed a substantial endangerment to the public health safety or welfare of the public, pursuant to MCL 324.3115(4) (Count II). Following a bench trial, the judge found Kircher guilty of both counts. Kircher was sentenced to a six-month term in jail for the polluting conviction. On the public endangerment charge, in addition to a $1 million fine, the judge sentenced Kircher to five years in prison, based on MCL 324.3115(4), which states that the trial court "shall impose . . . a sentence of 5 years' imprisonment" for that crime. Kircher then appealed to the Court of Appeals on a number of issues. With regard to his five-year prison sentence for violating MCL 324.3115(4), Kircher pointed out that the offense is listed as a crime that falls within the

guidelines for minimum sentences (at MCL 777.13c), and he argued that an indeterminate sentence was required (with both a minimum and maximum term), rather than the determinate five-year sentence imposed by the trial court. The Court of Appeals affirmed Kircher's convictions and sentence in an unpublished per curiam opinion. Kircher appeals.

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